
By: Senator Stone

Introduced and read first time: February 19, 1996

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Law Enforcement Officers - HIV Testing of Individuals Arrested**

3 FOR the purpose of including a law enforcement officer who conducted or assisted with
4 an arrest during which an exposure to certain bodily fluids may have occurred within
5 the class of victims who may request, through the State's Attorney, that an
6 individual with whom the alleged exposure occurred furnish a blood sample to be
7 tested for the presence of human immunodeficiency virus; authorizing a court to
8 order, based on a certain finding, an individual to furnish a blood sample under this
9 Act; requiring the court to conduct a certain hearing prior to issuing an order under
10 this Act; providing for notice of the hearing; specifying the type of evidence that
11 may be admissible at the hearing; requiring the written request of the law
12 enforcement officer to be sealed by the court; requiring the State's Attorney to
13 notify the local health officer of the law enforcement officer's request for testing
14 after a certain finding by the court; requiring the local health officer or the officer's
15 designee to perform certain acts on receipt of an order issued under this Act;
16 requiring the local health officer to perform certain acts after receiving the results
17 of a test conducted under this Act; providing for notice of the provisions of this Act;
18 providing for the disclosure and admissibility of test results under certain
19 circumstances; defining certain terms; making certain technical changes; and
20 generally relating to the testing of individuals who are arrested by law enforcement
21 officers for human immunodeficiency virus.

22 BY repealing and reenacting, with amendments,
23 Article 27 - Crimes and Punishments
24 Section 765
25 Annotated Code of Maryland
26 (1992 Replacement Volume and 1995 Supplement)

27 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
28 MARYLAND, That the Laws of Maryland read as follows:

29 **Article 27 - Crimes and Punishments**

30 765.

31 (a) (1) In this section the following words have the meanings indicated.

32 (2) "Agency" means any of the following:

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- 1 (i) The Department of State Police;
- 2 (ii) The Baltimore City Police Department;
- 3 (iii) The police department, bureau, or force of any county;
- 4 (iv) The police department, bureau, or force of any incorporated city
5 or town;
- 6 (v) The office of the Sheriff of any county;
- 7 (vi) The office of the State's Attorney of any county;
- 8 (vii) The office of the Attorney General;
- 9 (viii) The office of the State Prosecutor;
- 10 (ix) The Department of Juvenile Justice; or
- 11 (x) The police department, bureau, or force of any bicounty agency or
12 the University of Maryland.

13 (3) "Body fluids" has the meaning stated in § 18-338.1 of the Health -
14 General Article.

15 (4) "Charged" means the filing of an indictment, information, or petition
16 alleging a delinquent act.

17 (5) "Convicted" means:

- 18 (i) In receipt of a verdict or finding of guilt in a criminal proceeding;
- 19 (ii) Found to have committed a delinquent act in a juvenile proceeding
20 conducted in accordance with Subtitle 8, Title 3 of the Courts and Judicial Proceedings
21 Article; or
- 22 (iii) Having accepted a plea of guilt or nolo contendere.

23 (6) "Department" means the Department of Health and Mental Hygiene.

24 (7) "Exposure" means, as between a victim and a person ARRESTEDOR
25 charged:

- 26 (i) Percutaneous contact with blood or body fluids;
- 27 (ii) Mucocutaneous contact with blood or body fluids;
- 28 (iii) Open wound, including dermatitis, exudative lesions, or chapped
29 skin, contact with blood or body fluids for a prolonged period; or
- 30 (iv) Intact skin contact with large amounts of blood or body fluids for a
31 prolonged period.

32 (8) "Health officer" has the meaning as stated in § 1-101(d) of the Health -
33 General Article.

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1 (9) "HIV" means any human immunodeficiency virus that causes acquired
2 immune deficiency syndrome (AIDS).

3 (10) "LAW ENFORCEMENT OFFICER" MEANS A MEMBER OF A POLICE
4 FORCE OR OTHER AGENCY OF THE UNITED STATES, A STATE, A COUNTY, THE
5 DISTRICT OF COLUMBIA, A MUNICIPALITY, OR OTHER POLITICAL SUBDIVISION WHO
6 IS AUTHORIZED BY LAW TO MAKE ARRESTS.

7 [(10)] (11) "Offense" means:

8 (i) Any prohibited activity involving a sexual act that includes:

9 1. Contact between the penis and the vulva or the penis and the
10 anus, and for purposes of this subparagraph contact involving the penis occurs upon
11 penetration, however slight; or

12 2. Contact between the mouth and the penis, the mouth and the
13 vulva, or the mouth and the anus; or

14 (ii) Any other criminal offense or delinquent act the commission of
15 which may have caused or resulted in an exposure.

16 [(11)] (12) (i) "Victim" means:

17 1. [the] THE victim of an offense; OR

18 2. A LAW ENFORCEMENT OFFICER WHO CONDUCTED OR
19 ASSISTED WITH AN ARREST DURING WHICH AN EXPOSURE MAY HAVE OCCURRED.

20 (ii) "Victim" includes:

21 1. The parent of a victim who is a minor;

22 2. The legal guardian of a victim; or

23 3. The person authorized to give substituted consent for the
24 victim under § 5-605 of the Health - General Article.

25 (b) (1) Upon the written request of a victim to the office of the State's Attorney
26 in the jurisdiction where an offense occurred, the court shall order an individual
27 convicted of committing the offense or being granted probation before judgment under
28 Article 27, § 641 of the Code to furnish a blood sample to be tested for the presence of
29 HIV and any other identified causative agent of the acquired immune deficiency
30 syndrome (AIDS).

31 (2) The written request shall be filed by the State's Attorney with the court
32 and sealed by the court.

33 (c) [(1)] If the individual is charged within 1 year after the offense occurred, in
34 addition to the provisions of subsection (b) of this section, upon the written request of a
35 victim to the office of the State's Attorney in the jurisdiction where an offense occurred,
36 the court may order, upon a finding of probable cause to believe that an exposure
37 occurred, an individual charged with the offense to furnish a blood sample to be tested
38 for the presence of HIV.

1 (D) IF THE VICTIM IS A LAW ENFORCEMENT OFFICER WHO CONDUCTED OR
2 ASSISTED WITH AN ARREST DURING WHICH AN EXPOSURE MAY HAVE OCCURRED,
3 UPON THE WRITTEN REQUEST OF THE VICTIM TO THE OFFICE OF THE STATE'S
4 ATTORNEY IN THE JURISDICTION WHERE THE ARREST OCCURRED, THE COURT
5 MAY ORDER, UPON A FINDING OF PROBABLE CAUSE TO BELIEVE THAT AN
6 EXPOSURE OCCURRED, THE INDIVIDUAL ARRESTED TO FURNISH A BLOOD SAMPLE
7 TO BE TESTED FOR THE PRESENCE OF HIV.

8 [(2)] (E) (1) (i) Prior to issuing any order for testing under the provisions of
9 [paragraph (1)] SUBSECTIONS (C) OR (D) of this [subsection.] SECTION, the court shall
10 conduct a hearing at which both the victim and the person ARRESTED OR charged have
11 the right to be present.

12 (ii) Both the victim and the person ARRESTED OR charged shall be
13 notified of:

14 1. The date, time, and location of the hearing; and

15 2. Their right to be present at the hearing.

16 [(3)] (2) During the hearing only affidavits, counter-affidavits, and medical
17 records that relate to the material facts of the case used to support or rebut a finding of
18 probable cause for the issuance of a court order may be admissible.

19 [(4)] (3) The written request of the victim shall be filed by the State's
20 Attorney with the court and sealed by the court.

21 [(d)] (F) (1) After A conviction[, a] OR granting of probation before [
22 judgment,] JUDGMENT UNDER SUBSECTION (B) OF THIS SECTION or a finding of
23 probable cause by a court under subsection [(b) or] (c) OR (D) of this section[,
24 respectively], the State's Attorney shall promptly notify the local health officer of the
25 victim's written request for testing.

26 (2) Upon receipt of a court order for testing issued under subsection [(b) or
27 (c)] (B), (C), OR (D) of this section, the local health officer or the local health officer's
28 designee from any other governmental entity shall:

29 (i) Promptly collect the blood sample from the PERSON ARRESTED,
30 convicted or charged [individual];

31 (ii) Conduct the test on the blood sample; and

32 (iii) Provide pretest and posttest counseling to the victim and the
33 ARRESTED, charged or convicted individual in accordance with the provisions of Part VI,
34 Subtitle 3, Title 18 of the Health - General Article.

35 [(e)] (G) (1) After receiving the results of a test conducted under subsection
36 [(d)] (F) of this section, the local health officer shall promptly notify the victim and the
37 [accused] PERSON ARRESTED, CHARGED, or convicted [individual] of the test results.

38 (2) A local health officer may not disclose positive test results to a victim or
39 [a] ARRESTED, charged, or convicted individual without also providing, offering, or

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1 arranging for the provision of appropriate counseling to the victim and the PERSON
2 ARRESTED, charged, or convicted [individual].

3 [(f)] (H) The Department shall adopt regulations to implement the provisions of
4 this section, including regulations regarding:

5 (1) The confidentiality of test results; and

6 (2) Providing victims with counseling regarding HIV disease, HIV testing,
7 and referral for appropriate health care and support services.

8 [(g)] (I) A victim [of an offense described under this section] shall be notified of
9 the provisions of this section by:

10 (1) An agency upon the filing with a court of a statement of charges or
11 indictment or information or petition alleging delinquency for the alleged commission of
12 an offense;

13 (2) A rape crisis program established under Article 88A, § 130 of the Code
14 when the program is contacted by the victim; [or]

15 (3) An intake officer who receives a complaint for the alleged commission of
16 an offense under § 3-810 of the Courts and Judicial Proceedings Article; OR

17 (4) IF THE VICTIM IS A LAW ENFORCEMENT OFFICER WHO CONDUCTED
18 OR ASSISTED WITH AN ARREST DURING WHICH AN EXPOSURE MAY HAVE
19 OCCURRED, THE POLICE DEPARTMENT OR AGENCY OF WHICH THE OFFICER IS A
20 MEMBER ON THE PROCESSING OF THE INDIVIDUAL ARRESTED.

21 [(h)] (J) (1) A victim who receives notification under subsection [(e)] (G) of
22 this section may disclose the results of the test to any other individual to protect the
23 health and safety of:

24 (i) The victim;

25 (ii) The victim's sexual partner; or

26 (iii) The victim's family.

27 (2) Except as otherwise provided in this section, any person who receives
28 notification or disclosure of the results of the test under this subsection and knowingly
29 discloses the results of that test in violation of this section is guilty of a misdemeanor and
30 on conviction is subject to imprisonment of not more than 90 days or a fine of not more
31 than \$5,000 or both.

32 [(i)] (K) The results of any test conducted under this section are not admissible
33 as evidence of either guilt or innocence in any criminal proceeding arising out of the
34 ARREST OR alleged offense.

35 [(j)] (L) A State employee or agent or employee of the Department who acts in
36 compliance with the provisions of this section shall have the immunity from liability
37 described under § 5-399.2 of the Courts and Judicial Proceedings Article for actions
38 taken pursuant to this section.

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1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 1996.